

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

Gary W. Bastian, Commissioner,
Department of Labor and Industry,
State of Minnesota,

FINDINGS OF FACT,
CONCLUSIONS
AND ORDER

Complainant,

vs.

James Bieniek d/b/a Advanced
Construction,

Respondent.

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on March 21, 1996, in Courtroom No. 1 at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The record closed on the date of the hearing.

Mark W. Traynor, Assistant Attorney General, 445 Minnesota Street, 900 NCL Tower, St. Paul, Minnesota 55101, appeared representing the Complainant. There was no appearance by or on behalf of James Bieniek d/b/a Advanced Construction.

NOTICE

Notice is hereby given that under Minn. Stat. § 182.664, subd. 5, this decision may be appealed to the Minnesota Occupational Safety and Health Review Board by the employer, employee, their authorized representatives, or any party, within 30 days following the service by mail of this decision. The procedures for appeal are set out at Minn. Rules Ch. 5215.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether or not the Respondent was in violation of six OSHA standards at its workplace in Plymouth, Minnesota, on February 21, 1995, and if so, what penalty is appropriate.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent's workplace at 15700 36th Avenue North in Plymouth, Minnesota, was inspected by the OSH Division on February 21, 1995.
2. The Complainant issued a Citation and Notification of Penalty to the Respondent on March 28, 1995, alleging violations of seven standards at the work site and proposing a total penalty of \$3,850.00.
3. On April 17, 1995, the Respondent filed a Notice of Contest of the citation and penalty with the OSH Division.
4. On July 11, 1995, the Complainant issued a Summons and Notice to Respondent and a Complaint.
5. After the Complainant filed a Motion to Dismiss this case for failure by the Respondent to file an answer, the Respondent did file a written indication on December 19, 1995, that he intended to contest this matter.
6. The Complainant issued a Notice of and Order for Hearing in this matter on February 12, 1996, setting the hearing for March 21, 1996, at 9:30 a.m. at the Office of Administrative Hearings.
7. The Notice of and Order for Hearing and a Notice of Appearance form was served upon the Respondent by United States mail on February 14, 1996.
8. The Complainant filed a Notice of Appearance in this matter, but the Respondent did not.
9. The Respondent failed to appear at the hearing in this matter on March 21, 1996, and is therefore in default in this proceeding.
10. Under Minn. Rules pt. 1400.6000, allegations contained in the Notice of and Order for Hearing which incorporates by reference the Complaint and Citation issued in this matter are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 182.661, subd. 3.
2. The Department gave proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.
3. The Respondent is an employer as defined by Minn. Stat. § 182.651, subd. 7.

4. Minn. Stat. § 182.653, subd. 3, requires each employer to comply with Occupational Safety and Health Standards or Rules promulgated pursuant to Ch. 182 of the Statutes.

5. On February 21, 1995, the Respondent was in violation of the following standards: 29 C.F.R., § 1926.152(a)(1), 29 C.F.R., § 1926.153(o), 29 C.F.R., § 1926.404(f)(6), 29 C.F.R., §1926.501(b)(10), Minn. Rules 5206.0700, subp. 1(B), and 29 C.F.R. 1926.150(c)(1)(xiii).

6. Under Minn. Stat. § 182.666, subd. 6, the Commissioner has authority to assess fines giving due consideration to the appropriateness of the fine with respect to the size of the business and the employer, the gravity of the violation, the good faith of the employer and the history of previous violations.

7. The penalties assessed by the Commissioner as set out in the Citation and Notification of Penalty considered these factors and are appropriate.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. The Citations issued March 28, 1995, to the Respondent are AFFIRMED.
2. The Respondent, James Bieniek d/b/a Advanced Construction, shall pay to the Commissioner of Labor and Industry the sum of \$3,850.00. If the penalty is not paid within 60 days after the fine becomes a final Order, it must be increased to 125 percent of the originally-assessed amount. Furthermore, after 60 days, the unpaid fine shall accrue an additional penalty of 10 percent to month compounded monthly until the fine is paid in full as required by Minn. Stat. § 182.666, subd. 7.

Dated this ____ of March, 1995

GEORGE A. BECK
Administrative Law Judge

Reported: Taped, no transcript prepared.